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Enclos Corporation*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WILLIAM A. GROSS CONSTRUCTION
ASSOCIATES, INC.,

07-CV-10639 (LAK) (AJP)

Plaintiff,

ECF CASE

-against-

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

**ANSWER AND COUNTERCLAIM
OF FIFTH-PARTY DEFENDANT
ENCLOS CORPORATION**

Defendant.

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AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Third-Party Plaintiff,

-against-

CAULDWELL WINGATE COMPANY, LLC,

Third-Party Defendant.

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CAULDWELL WINGATE COMPANY, LLC,

Fourth-Party Plaintiff,

-against-

DORMITORY AUTHORITY OF THE STATE OF
NEW YORK,

Fourth-Party Defendant.

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DORMITORY AUTHORITY OF THE STATE
OF NEW YORK,

Fifth-Party Plaintiff,

-against-

A. WILLIAMS TRUCKING & BACKHOE
TRENCHING, INC., ASPRO MECHANICAL
CONTRACTORS, INC., BEAUBOIS
CANADA, INC., BOVIS LEND LEASE LMB,
INC., CAN SURETY CORPORATION D/B/A/
AMERICAN CASUALTY COMPANY OF
READING, PA, DIERKS HEATING
COMPANY, INC., ENCLOS CORPORATION,
FIVE STAR ELECTRIC CORPORATION,
FUTURE TECH CONSULTANTS OF NEW
YORK, INC., HERITAGE AIR SYSTEMS,
INC., HUGH O’KANE ELECTRIC CO., LLC,
MATERIALS TESTING LAD, INC.,
PYRAMID FIRE PROTECTION, INC.,
RAFAEL VINOLY ARCHITECTS P.C., SMI-
OVEN STEEL COMPANY, INC.,
STONEWALL CONTRACTING
CORPORATION, TRACTEL LTD. SWING
STAGE DIVISION,

Fifth-Party Defendants.

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For its Answer to the Fifth-Party Complaint of Fifth-Party Plaintiff Dormitory Authority of the State of New York (“DASNY”) and Counterclaim, Defendant Enclos Corporation (“Enclos”) states and alleges as follows:

1. Enclos denies the allegations of paragraph 1 of the Fifth-Party Complaint as they relate to Enclos. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 1 of the Fifth-Party Complaint as they relate to parties other than Enclos.

2. Enclos admits that it is a contractor that was engaged by DASNY in connection with the Project. Enclos denies the remaining allegations of paragraph 2 of the Fifth-Party

Complaint as they relate to Enclos. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 2 of the Fifth-Party Complaint as they relate to parties other than Enclos.

3. In response to the allegations set forth in paragraph 3 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos admits the allegations of paragraph 3 of the Fifth-Party Complaint.

4. In response to the allegations set forth in paragraph 4 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos admits the allegations of paragraph 4 of the Fifth-Party Complaint.

5. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 5 of the Fifth-Party Complaint.

6. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 6 of the Fifth-Party Complaint.

7. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 7 of the Fifth-Party Complaint.

8. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 8 of the Fifth-Party Complaint.

9. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 9 of the Fifth-Party Complaint.

10. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 10 of the Fifth-Party Complaint.

11. Enclos admits the allegations of paragraph 11 of the Fifth-Party Complaint.

12. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 12 of the Fifth-Party Complaint.

13. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 13 of the Fifth-Party Complaint.

14. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 14 of the Fifth-Party Complaint.

15. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 15 of the Fifth-Party Complaint.

16. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 16 of the Fifth-Party Complaint.

17. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 17 of the Fifth-Party Complaint.

18. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 18 of the Fifth-Party Complaint.

19. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 19 of the Fifth-Party Complaint.

20. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 20 of the Fifth-Party Complaint.

21. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 21 of the Fifth-Party Complaint.

22. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 22 of the Fifth-Party Complaint.

23. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 23 of the Fifth-Party Complaint.

24. Enclos admits the allegations of paragraph 24 of the Fifth-Party Complaint.

25. Enclos admits the allegations of paragraph 25 of the Fifth-Party Complaint.

26. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 26 of the Fifth-Party Complaint.

27. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 27 of the Fifth-Party Complaint.

28. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 28 of the Fifth-Party Complaint.

29. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 29 of the Fifth-Party Complaint.

30. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 30 of the Fifth-Party Complaint.

31. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 31 of the Fifth-Party Complaint.

32. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 32 of the Fifth-Party Complaint.

33. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 33 of the Fifth-Party Complaint.

34. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 34 of the Fifth-Party Complaint.

35. Enclos is without sufficient knowledge or information to form a belief as to the

truth of the allegations of paragraph 35 of the Fifth-Party Complaint.

36. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 36 of the Fifth-Party Complaint.

37. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 37 of the Fifth-Party Complaint.

38. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 38 of the Fifth-Party Complaint.

39. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 39 of the Fifth-Party Complaint.

40. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 40 of the Fifth-Party Complaint.

41. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 41 of the Fifth-Party Complaint.

42. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 42 of the Fifth-Party Complaint.

43. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 43 of the Fifth-Party Complaint.

44. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 44 of the Fifth-Party Complaint.

45. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 45 of the Fifth-Party Complaint.

46. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 46 of the Fifth-Party Complaint.

47. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 47 of the Fifth-Party Complaint.

48. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 48 of the Fifth-Party Complaint.

49. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 49 of the Fifth-Party Complaint.

50. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 50 of the Fifth-Party Complaint.

51. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 51 of the Fifth-Party Complaint.

52. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 52 of the Fifth-Party Complaint.

53. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 53 of the Fifth-Party Complaint.

54. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 54 of the Fifth-Party Complaint.

55. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 55 of the Fifth-Party Complaint.

56. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 56 of the Fifth-Party Complaint.

57. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 57 of the Fifth-Party Complaint.

58. Enclos is without sufficient knowledge or information to form a belief as to the

truth of the allegations of paragraph 58 of the Fifth-Party Complaint.

59. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 59 of the Fifth-Party Complaint.

60. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 60 of the Fifth-Party Complaint.

61. Enclos states that the Enclos Contract is dated October 17, 2001. Enclos admits the remaining allegations of paragraph 61 of the Fifth-Party Complaint.

62. Enclos denies the allegations of paragraph 62 of the Fifth-Party Complaint.

63. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 63 of the Fifth-Party Complaint.

64. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 64 of the Fifth-Party Complaint.

65. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 65 of the Fifth-Party Complaint.

66. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 66 of the Fifth-Party Complaint.

67. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 67 of the Fifth-Party Complaint.

68. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 68 of the Fifth-Party Complaint.

69. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 69 of the Fifth-Party Complaint.

70. Enclos is without sufficient knowledge or information to form a belief as to the

truth of the allegations of paragraph 70 of the Fifth-Party Complaint.

71. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 71 of the Fifth-Party Complaint.

72. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 72 of the Fifth-Party Complaint.

73. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 73 of the Fifth-Party Complaint.

74. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 74 of the Fifth-Party Complaint.

75. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 75 of the Fifth-Party Complaint.

76. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 76 of the Fifth-Party Complaint.

77. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 77 of the Fifth-Party Complaint.

78. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 78 of the Fifth-Party Complaint.

79. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 79 of the Fifth-Party Complaint.

80. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 80 of the Fifth-Party Complaint.

81. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 81 of the Fifth-Party Complaint.

82. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 82 of the Fifth-Party Complaint.

83. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 83 of the Fifth-Party Complaint.

84. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 84 of the Fifth-Party Complaint.

85. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 85 of the Fifth-Party Complaint.

86. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 86 of the Fifth-Party Complaint.

87. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 87 of the Fifth-Party Complaint.

88. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 88 of the Fifth-Party Complaint.

89. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 89 of the Fifth-Party Complaint.

90. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 90 of the Fifth-Party Complaint.

91. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 91 of the Fifth-Party Complaint.

92. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 92 of the Fifth-Party Complaint.

93. Enclos is without sufficient knowledge or information to form a belief as to the

truth of the allegations of paragraph 93 of the Fifth-Party Complaint.

94. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 94 of the Fifth-Party Complaint.

95. Enclos repeats and reiterates its answers to paragraphs 1 through 94 as though fully set forth herein.

96. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 96 of the Fifth-Party Complaint.

97. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 97 of the Fifth-Party Complaint.

98. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 98 of the Fifth-Party Complaint.

99. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 99 of the Fifth-Party Complaint.

100. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 100 of the Fifth-Party Complaint.

101. Enclos repeats and reiterates its answers to paragraphs 1 through 100 as though fully set forth herein.

102. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 102 of the Fifth-Party Complaint.

103. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 103 of the Fifth-Party Complaint.

104. Enclos states that it incurred delays in its work under the Enclos Contract, however, Enclos is without sufficient knowledge or information to form a belief as to the truth of

the allegations of paragraph 104 of the Fifth-Party Complaint.

105. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 105 of the Fifth-Party Complaint.

106. Enclos repeats and reiterates its answers to paragraphs 1 through 105 as though fully set forth herein.

107. In response to the allegations set forth in paragraph 107 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 107 of the Fifth-Party Complaint.

108. Enclos repeats and reiterates its answers to paragraphs 1 through 107 as though fully set forth herein.

109. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 109 of the Fifth-Party Complaint.

110. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 110 of the Fifth-Party Complaint.

111. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 111 of the Fifth-Party Complaint.

112. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 112 of the Fifth-Party Complaint.

113. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 113 of the Fifth-Party Complaint.

114. Enclos is without sufficient knowledge or information to form a belief as to the

truth of the allegations of paragraph 114 of the Fifth-Party Complaint.

115. Enclos repeats and reiterates its answers to paragraphs 1 through 114 as though fully set forth herein.

116. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 116 of the Fifth-Party Complaint.

117. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 117 of the Fifth-Party Complaint.

118. Enclos states that it incurred delays in its work under the Enclos Contract, however, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 118 of the Fifth-Party Complaint.

119. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 119 of the Fifth-Party Complaint.

120. Enclos repeats and reiterates its answers to paragraphs 1 through 119 as though fully set forth herein.

121. In response to the allegations set forth in paragraph 121 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 121 of the Fifth-Party Complaint.

122. Enclos repeats and reiterates its answers to paragraphs 1 through 121 as though fully set forth herein.

123. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 123 of the Fifth-Party Complaint.

124. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 124 of the Fifth-Party Complaint.

125. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 125 of the Fifth-Party Complaint.

126. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 126 of the Fifth-Party Complaint.

127. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 127 of the Fifth-Party Complaint.

128. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 128 of the Fifth-Party Complaint.

129. Enclos repeats and reiterates its answers to paragraphs 1 through 128 as though fully set forth herein.

130. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 130 of the Fifth-Party Complaint.

131. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 131 of the Fifth-Party Complaint.

132. Enclos states that it incurred delays in its work under the Enclos Contract, however, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 132 of the Fifth-Party Complaint.

133. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 133 of the Fifth-Party Complaint.

134. Enclos repeats and reiterates its answers to paragraphs 1 through 133 as though fully set forth herein.

135. In response to the allegations set forth in paragraph 135 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 135 of the Fifth-Party Complaint.

136. Enclos repeats and reiterates its answers to paragraphs 1 through 135 as though fully set forth herein.

137. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 137 of the Fifth-Party Complaint.

138. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 138 of the Fifth-Party Complaint.

139. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 139 of the Fifth-Party Complaint.

140. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 140 of the Fifth-Party Complaint.

141. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 141 of the Fifth-Party Complaint.

142. Enclos repeats and reiterates its answers to paragraphs 1 through 141 as though fully set forth herein.

143. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 143 of the Fifth-Party Complaint.

144. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 144 of the Fifth-Party Complaint.

145. Enclos states that it incurred delays in its work under the Enclos Contract, however, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 145 of the Fifth-Party Complaint.

146. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 146 of the Fifth-Party Complaint.

147. Enclos repeats and reiterates its answers to paragraphs 1 through 146 as though fully set forth herein.

148. In response to the allegations set forth in paragraph 148 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 148 of the Fifth-Party Complaint.

149. Enclos repeats and reiterates its answers to paragraphs 1 through 148 as though fully set forth herein.

150. Enclos admits that it provided labor, material, equipment and tools as required by its contract. Enclos denies all remaining allegations of paragraph 150 of the Fifth-Party Complaint.

151. Enclos denies the allegations of paragraph 151 of the Fifth-Party Complaint.

152. Enclos denies the allegations of paragraph 152 of the Fifth-Party Complaint.

153. Enclos denies the allegations of paragraph 153 of the Fifth-Party Complaint.

154. Enclos denies the allegations of paragraph 154 of the Fifth-Party Complaint.

155. Enclos repeats and reiterates its answers to paragraphs 1 through 154 as though fully set forth herein.

156. In response to the allegations set forth in paragraph 156 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos denies the allegations of paragraph 156 of the Fifth-Party Complaint.

157. Enclos repeats and reiterates its answers to paragraphs 1 through 156 as though fully set forth herein.

158. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 158 of the Fifth-Party Complaint.

159. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 159 of the Fifth-Party Complaint.

160. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 160 of the Fifth-Party Complaint.

161. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 161 of the Fifth-Party Complaint.

162. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 162 of the Fifth-Party Complaint.

163. Enclos repeats and reiterates its answers to paragraphs 1 through 162 as though fully set forth herein.

164. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 164 of the Fifth-Party Complaint.

165. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 165 of the Fifth-Party Complaint.

166. Enclos states that it incurred delays in its work under the Enclos Contract,

however, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 166 of the Fifth-Party Complaint.

167. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 167 of the Fifth-Party Complaint.

168. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 168 of the Fifth-Party Complaint.

169. In response to the allegations set forth in paragraph 169 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 169 of the Fifth-Party Complaint.

170. Enclos repeats and reiterates its answers to paragraphs 1 through 169 as though fully set forth herein.

171. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 171 of the Fifth-Party Complaint.

172. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 172 of the Fifth-Party Complaint.

173. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 173 of the Fifth-Party Complaint.

174. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 174 of the Fifth-Party Complaint.

175. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 175 of the Fifth-Party Complaint.

176. Enclos repeats and reiterates its answers to paragraphs 1 through 175 as though fully set forth herein.

177. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 177 of the Fifth-Party Complaint.

178. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 178 of the Fifth-Party Complaint.

179. Enclos states that it incurred delays in its work under the Enclos Contract, however, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 179 of the Fifth-Party Complaint.

180. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 180 of the Fifth-Party Complaint.

181. Enclos repeats and reiterates its answers to paragraphs 1 through 180 as though fully set forth herein.

182. In response to the allegations set forth in paragraph 182 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 182 of the Fifth-Party Complaint.

183. Enclos repeats and reiterates its answers to paragraphs 1 through 182 as though fully set forth herein.

184. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 184 of the Fifth-Party Complaint.

185. Enclos is without sufficient knowledge or information to form a belief as to the

truth of the allegations of paragraph 185 of the Fifth-Party Complaint.

186. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 186 of the Fifth-Party Complaint.

187. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 187 of the Fifth-Party Complaint.

188. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 188 of the Fifth-Party Complaint.

189. Enclos repeats and reiterates its answers to paragraphs 1 through 188 as though fully set forth herein.

190. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 190 of the Fifth-Party Complaint.

191. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 191 of the Fifth-Party Complaint.

192. Enclos states that it incurred delays in its work under the Enclos Contract, however, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 192 of the Fifth-Party Complaint.

193. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 193 of the Fifth-Party Complaint.

194. Enclos repeats and reiterates its answers to paragraphs 1 through 193 as though fully set forth herein.

195. In response to the allegations set forth in paragraph 195 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos is without sufficient knowledge or

information to form a belief as to the truth of the allegations of paragraph 195 of the Fifth-Party Complaint.

196. Enclos repeats and reiterates its answers to paragraphs 1 through 195 as though fully set forth herein.

197. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 197 of the Fifth-Party Complaint.

198. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 198 of the Fifth-Party Complaint.

199. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 199 of the Fifth-Party Complaint.

200. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 200 of the Fifth-Party Complaint.

201. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 201 of the Fifth-Party Complaint.

202. Enclos repeats and reiterates its answers to paragraphs 1 through 201 as though fully set forth herein.

203. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 203 of the Fifth-Party Complaint.

204. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 204 of the Fifth-Party Complaint.

205. Enclos states that it incurred delays in its work under the Enclos Contract, however, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 205 of the Fifth-Party Complaint.

206. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 206 of the Fifth-Party Complaint.

207. Enclos repeats and reiterates its answers to paragraphs 1 through 206 as though fully set forth herein.

208. In response to the allegations set forth in paragraph 208 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 208 of the Fifth-Party Complaint.

209. Enclos repeats and reiterates its answers to paragraphs 1 through 208 as though fully set forth herein.

210. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 210 of the Fifth-Party Complaint.

211. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 211 of the Fifth-Party Complaint.

212. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 212 of the Fifth-Party Complaint.

213. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 213 of the Fifth-Party Complaint.

214. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 214 of the Fifth-Party Complaint.

215. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 215 of the Fifth-Party Complaint.

216. Enclos repeats and reiterates its answers to paragraphs 1 through 215 as though fully set forth herein.

217. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 217 of the Fifth-Party Complaint.

218. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 218 of the Fifth-Party Complaint.

219. Enclos states that it incurred delays in its work under the Enclos Contract, however, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 219 of the Fifth-Party Complaint.

220. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 220 of the Fifth-Party Complaint.

221. Enclos repeats and reiterates its answers to paragraphs 1 through 220 as though fully set forth herein.

222. In response to the allegations set forth in paragraph 222 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 222 of the Fifth-Party Complaint.

223. Enclos repeats and reiterates its answers to paragraphs 1 through 222 as though fully set forth herein.

224. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 224 of the Fifth-Party Complaint.

225. Enclos is without sufficient knowledge or information to form a belief as to the

truth of the allegations of paragraph 225 of the Fifth-Party Complaint.

226. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 226 of the Fifth-Party Complaint.

227. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 227 of the Fifth-Party Complaint.

228. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 228 of the Fifth-Party Complaint.

229. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 229 of the Fifth-Party Complaint.

230. Enclos repeats and reiterates its answers to paragraphs 1 through 229 as though fully set forth herein.

231. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 231 of the Fifth-Party Complaint.

232. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 232 of the Fifth-Party Complaint.

233. Enclos states that it incurred delays in its work under the Enclos Contract, however, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 233 of the Fifth-Party Complaint.

234. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 234 of the Fifth-Party Complaint.

235. Enclos repeats and reiterates its answers to paragraphs 1 through 234 as though fully set forth herein.

236. In response to the allegations set forth in paragraph 236 of the Fifth-Party

Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 236 of the Fifth-Party Complaint.

237. Enclos repeats and reiterates its answers to paragraphs 1 through 236 as though fully set forth herein.

238. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 238 of the Fifth-Party Complaint.

239. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 239 of the Fifth-Party Complaint.

240. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 240 of the Fifth-Party Complaint.

241. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 241 of the Fifth-Party Complaint.

242. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 242 of the Fifth-Party Complaint.

243. Enclos repeats and reiterates its answers to paragraphs 1 through 242 as though fully set forth herein.

244. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 244 of the Fifth-Party Complaint.

245. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 245 of the Fifth-Party Complaint.

246. Enclos states that it incurred delays in its work under the Enclos Contract,

however, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 246 of the Fifth-Party Complaint.

247. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 247 of the Fifth-Party Complaint.

248. Enclos repeats and reiterates its answers to paragraphs 1 through 247 as though fully set forth herein.

249. In response to the allegations set forth in paragraph 249 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 249 of the Fifth-Party Complaint.

250. Enclos repeats and reiterates its answers to paragraphs 1 through 249 as though fully set forth herein.

251. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 251 of the Fifth-Party Complaint.

252. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 252 of the Fifth-Party Complaint.

253. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 253 of the Fifth-Party Complaint.

254. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 254 of the Fifth-Party Complaint.

255. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 255 of the Fifth-Party Complaint.

256. Enclos repeats and reiterates its answers to paragraphs 1 through 255 as though fully set forth herein.

257. In response to the allegations set forth in paragraph 257 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 257 of the Fifth-Party Complaint.

258. Enclos repeats and reiterates its answers to paragraphs 1 through 257 as though fully set forth herein.

259. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 259 of the Fifth-Party Complaint.

260. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 260 of the Fifth-Party Complaint.

261. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 261 of the Fifth-Party Complaint.

262. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 262 of the Fifth-Party Complaint.

263. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 263 of the Fifth-Party Complaint.

264. Enclos repeats and reiterates its answers to paragraphs 1 through 263 as though fully set forth herein.

265. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 265 of the Fifth-Party Complaint.

266. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 266 of the Fifth-Party Complaint.

267. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 267 of the Fifth-Party Complaint.

268. Enclos repeats and reiterates its answers to paragraphs 1 through 267 as though fully set forth herein.

269. In response to the allegations set forth in paragraph 269 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 269 of the Fifth-Party Complaint.

270. Enclos repeats and reiterates its answers to paragraphs 1 through 269 as though fully set forth herein.

271. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 271 of the Fifth-Party Complaint.

272. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 272 of the Fifth-Party Complaint.

273. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 273 of the Fifth-Party Complaint.

274. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 274 of the Fifth-Party Complaint.

275. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 275 of the Fifth-Party Complaint.

276. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 276 of the Fifth-Party Complaint.

277. Enclos repeats and reiterates its answers to paragraphs 1 through 276 as though fully set forth herein.

278. In response to the allegations set forth in paragraph 278 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 278 of the Fifth-Party Complaint.

279. Enclos repeats and reiterates its answers to paragraphs 1 through 278 as though fully set forth herein.

280. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 280 of the Fifth-Party Complaint.

281. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 281 of the Fifth-Party Complaint.

282. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 282 of the Fifth-Party Complaint.

283. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 283 of the Fifth-Party Complaint.

284. Enclos repeats and reiterates its answers to paragraphs 1 through 283 as though fully set forth herein.

285. In response to the allegations set forth in paragraph 285 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is

required. To the extent a response is required, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 285 of the Fifth-Party Complaint.

286. Enclos repeats and reiterates its answers to paragraphs 1 through 285 as though fully set forth herein.

287. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 287 of the Fifth-Party Complaint.

288. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 288 of the Fifth-Party Complaint.

289. Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 289 of the Fifth-Party Complaint.

290. Enclos repeats and reiterates its answers to paragraphs 1 through 289 as though fully set forth herein.

291. In response to the allegations set forth in paragraph 291 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 291 of the Fifth-Party Complaint.

292. In response to the allegations set forth in paragraph 292 of the Fifth-Party Complaint, Enclos states that the allegations state a legal conclusion to which no response is required. To the extent a response is required, Enclos is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 292 of the Fifth-Party Complaint.

293. Enclos denies each and every allegation of the Fifth-Party Complaint not expressly admitted or qualified herein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

294. The Fifth-Party Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

295. DASNY's claims are barred in whole or in part by the express limitation of actions/limitation of damages in the Enclos contract.

THIRD AFFIRMATIVE DEFENSE

296. DASNY's claims are barred in whole or in part by the applicable Statutes of Limitations.

FOURTH AFFIRMATIVE DEFENSE

297. DASNY's claims are barred by waiver, estoppel and laches.

FIFTH AFFIRMATIVE DEFENSE

298. DASNY's claims are barred in whole or in part by the failure to mitigate damages, if any.

SIXTH AFFIRMATIVE DEFENSE

299. DASNY's claims are barred in whole or in part by the equitable clean hands doctrine.

SEVENTH AFFIRMATIVE DEFENSE

300. DASNY's damages, if any, were caused by its own conduct or the conduct of others for whom Enclos is not responsible and over whom Enclos has no control.

EIGHTH AFFIRMATIVE DEFENSE

301. DASNY's claims are barred in whole or in part by the doctrine of accord and satisfaction.

NINTH AFFIRMATIVE DEFENSE

302. DASNY's claims are subject to applicable set-offs.

TENTH AFFIRMATIVE DEFENSE

303. DASNY's claims are subject to the principle of comparative negligence.

ELEVENTH AFFIRMATIVE DEFENSE

304. DASNY's claims are limited by its own breach of contract.

COUNTERCLAIM

For its Counterclaim against Fifth-Party Plaintiff DASNY, Fifth-Party Defendant Enclos states and alleges as follows:

PARTIES

1. Enclos is, and was at all relevant times, a domestic business corporation duly organized and existing under the laws of the State of Minnesota and authorized to conduct business in the State of New York. Enclos' principal place of business is located at 2770 Blue Water Road, Eagan, Minnesota 55121.

2. On information and belief, DASNY is a public benefit corporation organized and existing under the Public Authorities Law of the State of New York, and maintains a place of business at 515 Broadway, Albany, New York.

JURISDICTION AND VENUE

3. This Court has supplemental jurisdiction over the Fifth-Party Action under 28 U.S.C. § 1367(a).

4. Venue is proper under 28 U.S.C. § 1391(b).

GENERAL ALLEGATIONS

5. On or about October 17, 2001, Enclos entered into a written contract identified as Contract No. DA 78639/1380909999 (the “Enclos Contract”) with DASNY under which Enclos agreed to perform certain curtain wall work and other exterior work at the Bronx County Hall of Justice located in Bronx County, New York (the “Complex” or the “Project”) in exchange for compensation for its services from DASNY.

6. The Enclos Contract incorporated, by reference, among other things, drawings and specifications (the “Contract Documents”).

7. Enclos provided labor and material to construct the Project, in furtherance of the Project, and in accordance with the Enclos Contract.

8. From time to time, Enclos properly submitted change orders for its work on the Project.

9. Enclos timely submitted invoices and demanded payment for the products it provided and the services it performed on the Project.

10. DASNY has and continues to wrongfully withhold and refuse to pay to Enclos amounts due to Enclos, and has breached numerous contractual and other duties imposed by law. Enclos’ work was delayed by the actions or inactions of DASNY and/or other contractors or agents of DASNY as to whom DASNY bears responsibility.

11. Enclos has sustained damages as a result of DASNY’s refusal to pay Enclos for

amounts due and owing under the Enclos Contract, including change orders thereunder; and as a result of breaches or other actions or inactions of DASNY or for which DASNY bears responsibility. Such damages are substantial, ongoing, and exceed \$3,000,000.00.

COUNT I – BREACH OF CONTRACT

12. Enclos incorporates and realleges paragraphs 1 through 11 of its Counterclaim.

13. DASNY has breached the Enclos Contract by, among other things:

- a. failing to administer the Project in a timely and proper manner;
- b. failing to approve change orders;
- c. failing to compensate Enclos for the many changes expressly and continuously required by DASNY;
- d. failure to coordinate the different trades working on the Project;
- e. failure to properly design the Project and interpret drawings, resulting in, among other things, the performance of extra work, unanticipated extra and increased costs, and delays;
- f. failure to properly sequence the work on the Project;
- g. interfering with Enclos' work on the Project by not allowing Enclos to work in areas as needed,
- h. failure to provide timely and adequate engineering;
- i. failure to provide timely and adequate inspections; and
- j. failing to make payment of principal and interest when due.

14. As a direct and proximate result of DASNY's breaches of the Enclos Contract, Enclos has been damaged in an amount exceeding \$3,000,000.00.

15. DASNY is liable to Enclos for its breach of the Enclos Contract in an amount exceeding \$3,000,000.00, plus interest, costs and reasonable attorneys' fees.

COUNT II – BREACH OF WARRANTY

16. Enclos incorporates and realleges paragraphs 1 through 15 of its Counterclaim.

17. By making the Contract Documents for the Project available to Enclos and other contractors, DASNY expressly and/or impliedly warranted and represented that, among other things:

- a. the Contract Documents were adequate, fit and suitable for their intended and implicit purpose;
- b. the information and representations contained in the Contract Documents, including, but not limited to, the quantities of work, description of work, and conditions under which the work was to be performed, were complete and accurate;
- c. the work on the Project could be successfully performed using ordinary economically practicable and customary construction methods, means, and techniques in the time allocated in the Contract Documents; and
- d. physical conditions appropriate to performing the work indicated in the drawings and specifications exist.

18. The implied warranties provided by DASNY concerned material facts.

19. Enclos relied on DASNY's express and/or implied warranties, and was, therefore, induced to bid on the Project.

20. Enclos' reliance was reasonable under the circumstances.

21. The conditions encountered by Enclos were materially different from those indicated or implied by the Contract Documents.

22. DASNY breached each of the warranties set forth in Paragraph 17 of the Counterclaim, in that the warranties were not true.

23. As a direct result of DASNY's multiple breaches of warranty, Enclos has been damaged in an amount exceeding \$3,000,000.00, plus interest, costs and reasonable attorneys' fees.

WHEREFORE, Defendant Enclos Corp., requests that judgment be entered in its favor as follows:

- (1) that Fifth-Party Plaintiff DASNY take nothing by its Fifth-Party Complaint;
- (2) granting an award of damages for Enclos against DASNY in an amount to be determined at trial;
- (3) granting Enclos Corp., its costs and attorneys' fees; and
- (4) such other relief as the Court shall determine is just and equitable.

Dated: August 13, 2008

DORSEY & WHITNEY LLP

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